IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.876 OF 1988

The State of Maharashtra)
(through the Special Land)
Acquisition Officer, Metro)
Centre No.IV, Panvel, Tal.:)
Panvel, Dist: Raigad) ... Appellant

V/s.

Bhupendra Thakarsi Parekh)
residing at Panvel, Tal.:Panvel)
Dist.: Raigad) ... Respondent

Mrs.G.P. Mulekar, AGP, for Appellant
None for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 21, 2004**

ORAL JUDGMENT:

. The Appeal challenges the judgment and order in Land Acquisition Reference No.24 of 1982 whereby the claimants were awarded additional compensation of Rs.6,78,355.75 with interest @ 12% per annum from the date of the order till realisation and the cost of the Reference. The appeal is limited to the extent as to whether the claimants can be awarded interest on compensation of 12% where the award is made prior to 30.4.1982.

2. The lands in Panvel Taluka, District: Raigad

were acquired for the New Bombay project. The land of the claimants was acquired under a notification dated 3.2.2000 issued under section 4 of the Land Acquisition Act which was published on 4.2.1970. The award was made in respect of acquired lands on 7.9.1981. The claimants claimed enhanced compensation by filing a Reference under the Act. The Reference Court has granted compensation @ 12% interest per annum as provided under section 23(1A) of the Land Acquisition Act amounting to Rs.2,68,965/- apart from the compensation, solatium and interest. Mrs.Mulekar, learned Assistant Government Pleader, submits that the Reference Court was in error in awarding interest @ 12% per annum on the compensation under section 23(1A) when the award was made prior to 30.4.1982. She places reliance on the judgment of the Supreme Court in the case of *Kashiben Bhikabai & Ors. v/s. Special Land Acquisition Officer & Anr.*, **(2002) 2 SCC 605**. The Apex Court while deciding this issue has reiterated the view taken by it in *Union of India & Ors. v/s. Filip Tiago De Gama Of Vedem Vasco De Gama,* **(1990) 1 SCC 277**. The Apex Court in the judgment in *Filip Tiago*'s case has held thus:

> 21. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending

before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2).

3. There is no dispute that the acquisition proceedings were not pending before the Collector on 30.4.1982 since the award was made on 7.4.1981. The submission made by Mrs.Mulekar must be accepted.

4. The First Appeal is allowed. The amount awarded as compensation @ 12% per annum under section 23(1A) of the Land Acquisition Act is set aside. No costs.